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AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

GARY KREMEN,

**Case No. C 06-2554 JW**  
[Related to Case No. C 98-20718 JW]

Plaintiff,

VS.

**CASE MANAGEMENT CONFERENCE  
STATEMENT OF DEFENDANT AMERICAN  
REGISTRY FOR INTERNET NUMBERS, LTD.**

# AMERICAN REGISTRY FOR INTERNET NUMBERS LTD.

**Defendant**

Hearing Date: October 23, 2006  
Time: 10:00 a.m.  
Location: Courtroom 8, 4th Floor  
Judge: The Honorable James Ware

## **PREFATORY STATEMENT**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure (“Rule”), Local Rule for the Northern District of California (“Local Rule”) 16-9, and Appendix A referenced in Local Rule 16-9, Defendant American Registry for Internet Numbers, Ltd. (“ARIN”), by and through its

CMC STATEMENT OF DEFENDANT AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD.

Case No. C 06-2554 JW

1 counsel, submits this Case Management Conference Statement. ARIN prepared a proposed Joint  
 2 Case Management Conference Statement and sent it to counsel for Plaintiff Gary Kremen  
 3 (“Kremen”), on Thursday, October 12, 2006. Despite attempts, ARIN’s counsel was unable to  
 4 secure timely comments from Kremen’s counsel to the draft Joint Case Management Statement to  
 5 enable ARIN to file a joint statement. Accordingly, ARIN submits this Case Management  
 6 Conference Statement on its own behalf in order to comply with the Court’s Scheduling Order.<sup>1</sup>  
 7 ARIN will continue to attempt to meet and confer with Kremen’s counsel regarding the form of a  
 8 Joint Case Management Conference and will file the same once agreement on the form can be  
 9 reached.

10 **A Brief Description Of The Events Underlying The Above-Entitled Action:**

11 In April 2006, Kremen sued ARIN for violations of federal and California antitrust laws,  
 12 as well as California state causes of action for conversion, unfair business competition and breach  
 13 of fiduciary duty. On June 8, 2006, ARIN moved this Court, pursuant to Rule 12(b)(6), to  
 14 dismiss with prejudice Kremen’s Complaint on the grounds that the Complaint failed to state any  
 15 claim on which relief can be granted. (“Motion To Dismiss/Stay”). As an alternative ground for  
 16 relief, ARIN requested in its Motion To Dismiss/Stay that this Court stay the present lawsuit  
 17 pending disposition of ARIN’s motion to modify or clarify this Court’s September 17, 2001  
 18 Order issued by the Honorable James Ware (“Motion For Clarification/Modification”) in the  
 19 related case of *Kremen v. Cohen* USDC N.D. Cal. Case No. C98 20718 JW (the “*Kremen v.*  
 20 *Cohen Action*”). Both motions are currently set for hearing on October 23, 2006 before this  
 21 Court.

22 In the instant litigation, Plaintiff asserts that ARIN has a monopoly over Internet Protocol  
 23 addresses (“IP Addresses”), and that ARIN’s conduct in not providing Kremen with particular IP

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24 <sup>1</sup> This filing is timely pursuant to the parties Stipulated Request And Order Continuing The  
 25 Hearing On (1) Defendant American Registry of Internet Numbers, Ltd.’s Motion To Dismiss  
 26 Plaintiff’s Complaint Pursuant To 12(b)(6) Or, Alternatively, For A Stay; and (2) Case  
 27 Management Conference, which was entered by the Court on August 28, 2006. Although this  
 28 Court initially set the Rule 16(f) Case Management Conference (“CMC”) for September 25,  
 2006, the parties stipulated to coordinating the CMC with the October 23, 2006, hearing on the  
 pending motions in this case and in the *Kremen v. Cohen* case in the interest of judicial economy  
 and convenience.

1 Addresses is a violation of federal and California antitrust laws, as well as a violation of various  
 2 California state laws. Kremen's present lawsuit relies almost entirely on the Judgment entered in  
 3 the *Kremen v. Cohen Action*, whereby Kremen obtained a \$65 million judgment against Michael  
 4 Cohen ("Cohen") in April 2001 (the "Judgment"). The Judgment imposed a constructive trust on  
 5 all of Cohen's assets. Kremen maintains that Cohen's assets include particular IP Addresses, and  
 6 that ARIN's refusal to transfer those IP Addresses to Cohen is unlawful monopolistic conduct,  
 7 actionable anti-competitive behavior, conversion and breach of fiduciary duty.

8 ARIN denies it has committed any of the wrongful conduct alleged by Kremen, denies  
 9 that Kremen's complaint states a claim against ARIN and denies that Kremen is entitled to any  
 10 relief whatsoever against ARIN.

11 **The Principal Factual And Legal Issues Which The Parties Dispute:**

12 The issues in this case depend heavily on how this Court resolves the issues in the pending  
 13 Motion for Clarification\Modification in the *Kremen v. Cohen* case. Until that time, the principal  
 14 factual and legal issues which the parties dispute include: (1) whether Kremen's causes of action  
 15 are time-barred; (2) whether ARIN is bound by the September 17, 2001 Order; (3) whether ARIN  
 16 has restrained trade under Section 1 of the Sherman Act; (4) whether ARIN has conspired to  
 17 restrain trade under Section 1 of the Sherman Act; (5) whether ARIN monopolized the market at  
 18 issue in violation of Section 2 of the Sherman Act; (6) whether ARIN attempted to monopolize  
 19 the market at issue in violation of Section 2 of the Sherman Act; (7) whether ARIN conspired and  
 20 acted to restrain trade under California's Cartwright Act; (8) whether ARIN converted particular  
 21 IP Addresses allegedly owned by Kremen; (9) whether ARIN breached a fiduciary duty allegedly  
 22 owed to Kremen; (10) whether ARIN engaged in California unfair business practices; and (11)  
 23 the amount of damages, if any, suffered by Kremen.

24 **Other Unresolved Factual Issues:**

25 None.

26 **The Parties Which Have Not Been Served And The Reasons:**

27 None.

28

**The Additional Parties Which The Below-Specified Parties Intend To Join And The Intended Time Frame For Such Joinder:**

None.

**The Following Parties Consent To Assignment Of This Case To A United States Magistrate**

The parties do not consent to the assignment of this case to a United States Magistrate Judge.

## **ALTERNATIVE DISPUTE RESOLUTION**

## **Information Regarding the ADR Process Or Deadline**

This case was not automatically assigned to Nonbinding Arbitration at filing. Given the present procedural posture of this case and the potential impact that this Court's ruling on the pending Motion for Clarification\Modification in the *Kremen v. Cohen* case might have on this case, the parties did not file a Stipulation and Proposed Order Selecting an ADR process, the parties have not filed a Notice of Need for ADR Phone Conference, and the parties have not filed a Stipulation and Proposed Order Selecting an ADR.

On October 11, 2006, this Court issued a Notice re Noncompliance with Court Order concerning the ADR process filings mentioned above. ARIN requests that it be allowed to file the appropriate ADR filings within one week of the continued CMC requested below.

## **DISCLOSURES**

**The Parties Certify That They Made The Following Disclosures:**

In anticipation of the disposition of the pending motions before this Court, the parties have not exchanged their Initial Disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, and therefore have not listed disclosures of persons, documents, or damage computations. With respect to the disclosures and discovery authorized by Rule 26(a) and Rule 26(f), ARIN contends that the disclosure of information should be stayed until disposition of the pending motions, a determination that will substantially vitiate, if not completely eliminate, issues in the present case. It is ARIN's position, therefore, that based on the facts and circumstances of this case, the parties' disclosure and discovery obligations under Rules 26(a) and 26(f) should be

1 suspended until final resolution of the pending motions. No disclosures or discovery is necessary  
 2 until such a time.

### 3 DISCOVERY

4 ARIN contends that discovery should not take place as contemplated under the applicable  
 5 Federal Rules of Civil Procedure and Local Rules until the disposition of ARIN's Motion To  
 6 Dismiss and Motion For Modification/Clarification in the *Kremen v. Cohen* case. ARIN  
 7 maintains that until the pending motions are resolved, the parties cannot determine the true issues  
 8 in dispute or the time necessary to conduct or complete discovery, and thus, permitting discovery  
 9 at time would promote the wasteful use of valuable time and resources by the parties and their  
 10 respective counsel. ARIN contends that if the Court does not rule on ARIN's Motion to  
 11 Dismiss/Stay and Motion For Modification/Clarification on the scheduled hearing date of October  
 12 23, 2006, the Court should reschedule the CMC for a date after the full and final disposition of  
 13 ARIN's pending motions. ARIN contends that if either motion does not dispose of this action in  
 14 its entirety, that a forty-five (45) day continuance from the date the last pending motion is ruled  
 15 upon would provide the parties with adequate time to meet and confer regarding their disclosure  
 16 and discovery obligations under Rule 26.

### 17 TRIAL SCHEDULE

#### 18 **The Parties Request A Trial Date As Follows:**

19 ARIN contends that it cannot competently select a trial date until disposition of ARIN's  
 20 Motion To Dismiss/Stay and Motion For Clarification/Modification.

#### 21 **The Parties Expect That The Trial Will Last For The Following Number Of Days:**

22 ARIN maintains that it cannot accurately approximate the number of days necessary for  
 23 trial until disposition of ARIN's Motion To Dismiss/Stay and Motion For  
 24 Clarification/Modification in the *Kremen v. Cohen* case.

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1 Dated: October 16, 2006  
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MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Jack S. Yeh  
Jack S. Yeh

*Counsel for Defendant*  
AMERICAN REGISTRY FOR INTERNET NUMBERS,  
LTD.